



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

AUG 06 2010

Mr.

Dear Mr.

Thank you for your correspondence of June 2, 2010 to Senator Barbara A. Mikulski concerning the U.S. Environmental Protection Agency's (EPA) recent actions regarding Arch Coal's Spruce No. 1 Surface Mine located in Logan County, West Virginia. The Senator has asked EPA to respond directly to you about this issue.

The Spruce No. 1 Mine is one of the largest mountaintop mining operations authorized in Appalachia and occurs in a watershed where many streams have been previously impacted by mining operations. As authorized, the project will impact 2,278 surface acres and place fill material into approximately 7.5 miles of streams. It is important to note that EPA has not rescinded the permit authorized by the Army Corps of Engineers (Corps) but has initiated a process to determine if the project will have unacceptable adverse effects on the aquatic environment and what outcome from the process, as described below, is most appropriate to address those effects.

Under the Clean Water Act Section 404(c), the EPA Administrator has the authority to prohibit use of a site for deposition of dredged or filled materials in waters of the United States or modify the nature of a project if it is determined that the project would result in unacceptable adverse effects on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas. EPA's preference is to address environmental concerns effectively prior to permit issuance. EPA has consistently expressed concerns regarding the magnitude and potential severity of the environmental impacts from the Spruce No. 1 Mine. Among other places, these concerns were expressed in comments provided in response to the Public Notice in July 1999, again in response to the draft Environmental Impact Statement (EIS) in August 2002, followed by additional comments on the final EIS in October and November 2006.

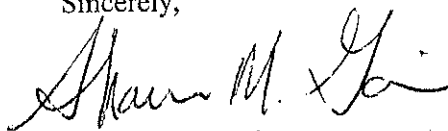
EPA issued a public notice of a Proposed Determination, which was published in the Federal Register on April 2, 2010. Ultimately, EPA's process will result in one of three outcomes: (1) EPA could decide to use its discretion to prohibit any discharges from the project, including the construction of valley fills; (2) EPA could decide that the project cannot go forward under the permit as currently issued, but could go forward under a modified permit that would include more environmentally protective conditions; or (3) EPA could decide that the permit as

currently issued is sufficiently protective. More information about the 404(c) process and copies of relevant documents, including the Proposed Determination, may be found at www.epa.gov/mtntop/spruce1.html.

EPA recognizes the importance of coal to Appalachia and to the nation's energy mix, as well as the importance of a strong, diverse, and sustainable Appalachian regional economy. Nevertheless, EPA's primary obligation is to prevent harm to our waters and the environment based on law and science.

If you have any questions, please do not hesitate to contact me or have your staff contact Mrs. Linda Miller, EPA's Maryland Liaison, at 215-814-2068.

Sincerely,

A handwritten signature in black ink, appearing to read "Shawn M. Garvin". The signature is fluid and cursive, with a large initial "S" and a stylized "G".

Shawn M. Garvin
Regional Administrator



BARBARA A. MIKULSKI
MARYLAND

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WASHINGTON, DC 20510-2003

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United States Senate
WASHINGTON, DC 20510-2003

June 28, 2010

Ms. Joyce K. Frank
Acting Assoc. Admin. for Cong. and Intergov'tl. Relations
Environmental Protection Agency
1200 Pennsylvania Ave., N. W.
Room 3426 ARN
Washington, D.C. 20460-0001

Dear Ms. Frank:

I am writing to request your consideration of the attached correspondence from . Please respond directly to Mr. and send a copy to Deborah Moldover of my staff. If you have any questions, please call Ms. Moldover at (202) 224-4654.

Thank you for your assistance.

Sincerely,



Barbara A. Mikulski
United States Senator

BAM:cst
Enclosure

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<http://mikulski.senate.gov/>

E-Mail Viewer

Message	Details	Attachments	Headers	Source
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HTML

From: "nobody@www.senate.gov" <nobody@www.senate.gov>
Date: 6/2/2010 3:28:35 PM
To: "webmail@mikulski-iq.senate.gov" <webmail@mikulski-iq.senate.gov>
Cc:
Subject: www_email

I am writing to oppose the revocation of the Spruce No. 1 Mine permit. After three years of operation and after over a decade of permit review by state and federal regulators the EPA revoked the Spruce No. 1 without proper authority or precedent.

To shut down the mine, the EPA is claiming authority under a provision of the Clean Water Act – § 404(c) – that only applies before a permit has been issued, an authority the EPA did not use when the permit was under review in 2007 and goes against U.S. Army Corps of Engineers (USACE) opinion, which contends that the EPA has no grounds for revoking the permit.

The EPA is using a Clean Water Act provision and yet, an environmental impact statement compiled by the USACE and reviewed by the EPA concluded that the Spruce No. 1 mining site would "contribute minimally to cumulative impacts on surface water quality" and would add waterways and wetlands after reclamation of the mined lands.

The action against the Spruce No.1 mine is unfair, outrageous and wholly exceeds the authority of the EPA. It threatens of hundreds of jobs at the mining site and could have serious repercussions for all mining jobs in West Virginia and throughout Appalachia.

Coal mining operations already comply with strict environmental standards set by the local, state and federal governments. In addition to complying with all environmental laws and regulations, the coal industry creates new economic opportunities, while meeting the nation's energy requirements. I strongly urge you to reinstate the Spruce No. 1 permits and provide a fair and realistic approach to evaluating environmental and economic priorities in Appalachia.

[Close](#)

People Record Help

Summary	Name	Addresses	Relations	Mail	Workflow	Events	Status Log	Attachments	Discussion
Actions									
Add Mail									
Log In Mail									
Add Workflow									
Add Default WF									
New Address									
New E-Mail									
New Phone									
Save									
Save and Close									
Close									
Refresh									
History									
Add to Household									
Add to Organization									
Duplicate Check									
Print Summary by Section									
Update Salutation									
Name									
Mailing Address:									
Phone #/E-mail(s):									
Mail/Workflow: 1 pending mail, 5 closed mail									
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Middle									
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Suffix									
Appellation									
Mr.									
Formal Salutation									
Informal Salutation									
Household Salutation									
Household Name									
Mr.									
Mr.									
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Other Information									
Birthday									
Comments									
Created by IMA									
Affiliations									
Principal Last Name									
Principal First Name									

